

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

HAVE A NICE LIFE, INC.,
Plaintiff,
v.
HOME BOX OFFICE, INC.,
Defendant.
No. C06-0601RSL
ORDER GRANTING DEFENDANT'S
MOTION TO TRANSFER

This matter comes before the Court on “Home Box Office, Inc.’s Motion for Transfer of Venue.” Dkt. # 5. In its complaint, plaintiff seeks a declaration that its use of the domain name “sexandthecity.com” is not a violation of the Anti-Cybersquatting Consumer Protection Act, 15 U.S.C. § 1125(d) and injunctive relief to prevent the transfer of the disputed domain name to defendant. An almost identical suit is pending in the Eastern District of Virginia where the same parties are disputing the use and ownership of the domain name “sexinthecity.com.” The suits were filed in Washington and Virginia in accordance with the permissive jurisdictional provision of the Uniform Domain Name Dispute Resolution Policy (“UDRP”) Rule 1(a). Neither party resides in Washington or Virginia: the only connection to these states is the location of the domain name registrars.

Defendant requests that this case be transferred to the Eastern District of Virginia pursuant to 28 U.S.C. § 1404(a), which provides: "For the convenience of parties and witnesses,

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1 in the interest of justice, a district court may transfer any civil action to any other district or
 2 division where it might have been brought.”¹ Defendant has the burden of showing that the
 3 overall convenience of the parties and witnesses, in the interests of justice, weighs in favor of
 4 transferring the above-captioned case to the United States District Court for the Eastern District
 5 of Virginia. Decker Coal Co. v. Commonwealth Edison Co., 805 F.2d 834, 843 (9th Cir. 1986).

6 Section 1404(a) is the statutory equivalent of the common law doctrine of *forum*
 7 *non conveniens* where the alternative forum is within the territory of the United States. Ravelo
 8 Monegro v. Rosa, 211 F.3d 509, 512-13 (9th Cir. 2000). “[T]he central focus of the *forum non*
 9 *conveniens* inquiry is convenience” Piper Aircraft Co. v. Reyno, 454 U.S. 235, 248-49
 10 (1981). Generally, “a plaintiff’s choice of forum should rarely be disturbed. However, when an
 11 alternative forum has jurisdiction to hear the case, and when trial in the chosen forum would
 12 ‘establish . . . oppressiveness and vexation to a defendant . . . out of all proportion to plaintiff’s
 13 convenience,’ or when the ‘chosen forum [is] inappropriate because of considerations affecting
 14 the court’s own administrative and legal problems,’ the court may, in the exercise of its sound
 15 discretion, dismiss the case.” Piper Aircraft, 454 U.S. a 241 (citations omitted).

16 Having reviewed the memoranda, declarations, and exhibits submitted in this
 17 matter as well as the motion to consolidate and transfer venue that plaintiff filed in the Eastern
 18 District of Virginia, the Court finds that neither of the two venues is particularly convenient for
 19 plaintiff. These suits were initiated in Washington and Virginia only because UDRP Rule 1(a)
 20 provides for jurisdiction in those states, not because any parties, witnesses, or documents are
 21 located there. According to the complaint, Have a Nice Life is a Florida corporation with its

22 ¹ Plaintiff filed a “Motion to Consolidate and Transfer Venue” in the Virginia action on May 8,
 23 2006. That motion was denied on June 2, 2006, “for reasons stated from the Bench.” Have A Nice Life,
 24 Inc. v. Home Box Office, Inc., C06-0480 TSE/TRJ at Dkt. # 10.

25 The parties both agree that this action could have been brought in Virginia because defendant is
 26 subject to personal jurisdiction there and all federal courts have subject matter jurisdiction over cases
 arising under the Anti-Cybersquatting Consumer Protection Act.

1 principal place of business in Florida.² Whether this case is tried in Virginia or Washington,
2 plaintiff will be required to travel significant distances in order to participate in court
3 proceedings. Nevertheless, the Court finds that Virginia would be a slightly more convenient
4 venue because it is within the same time zone as Florida, thereby avoiding the difficulties in
5 travel and communications caused by a three-hour time delay. The same analysis applies to
6 defendant, which is a New York corporation. The private interest analysis is inconclusive,
7 however, because this slight preference for Virginia is counterbalanced by plaintiff's rule-based
8 choice of Washington as the situs of this litigation.

9 There being neither manifest oppression nor any evidence that Washington is more
10 convenient for the witnesses or the parties, the Court turns to the public's interests. As
11 recognized by plaintiff, the purposes of § 1404(a) "is to prevent the waste of time, energy and
12 money and to protect litigants, witnesses and the public against unnecessary inconvenience and
13 expense." Dkt. # 3 at 14 (citing Van Dusen v. Barrack, 376 U.S. 612, 616 (1964) (internal
14 quotation marks omitted)). Now that the district court in Virginia has denied plaintiff's motion
15 to consolidate and transfer, the only means by which to avoid the duplication of evidentiary and
16 judicial processes and to reduce the corresponding financial burdens on the public courts and the
17 parties is to transfer this action to the Eastern District of Virginia. Such a transfer will promote
18 judicial efficiency and avoid the risk of inconsistent verdicts with virtually no adverse effects on
19 the private interests of the parties.

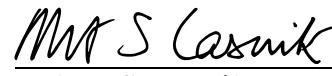
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22 ² Although it appears that one of plaintiff's shareholders and directors lives in Australia, his
23 location is not particularly relevant given that Have a Nice Life is the owner of the disputed domain
24 names. Mr. Kotcher's contention that Have a Nice Life does not have any offices or employees in
25 Florida is inconsistent with the representations plaintiff has made during the last two months to the
26 Eastern District of Virginia, the Western District of Washington, the Florida Department of State,
Division of Corporations, and plaintiff's customers.

1 For all of the foregoing reasons, defendant's request for a transfer is GRANTED.
2 The Clerk of Court is directed to transfer this matter to the United States District of the Eastern
3 District of Virginia as related to Have A Nice Life, Inc. v. Home Box Office, Inc.,
4 C06-0480 TSE/TRJ.

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6 DATED this 16th day of June, 2006.
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10 Robert S. Lasnik
11 United States District Judge
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